

FALLS ET AL. — 08/983,394
Client/Matter: 037033-0314075

REMARKS

With this Amendment claims 72-132 remain pending in the application with claims 72, 77, 79, 92, 93, 94, 99, 117, 118, 120, 121, 124, 126, 127, and 132 being amended.

Rejection Under 35 U.S.C. §112

In paragraph 3 of the Office Action, claims 77, 78 and 98-116 have been rejected as being indefinite under 35 USC 112. In response, the claims have been amended as suggested in the Office Action. Accordingly, withdrawal of the rejection is respectfully requested.

Rejection Under 35 U.S.C. §101

Claims 121 stands rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. See Office Action, pg. 3. In particular, the Examiner alleges that the aforementioned claim does not “*apply, involve, use or advance the technological arts.*” Inasmuch as claim 121 has been amended and more clearly satisfies 35 USC 101, the outstanding rejection is traversed. In particular, The Board of Patent Appeals and Interferences has held that “there is currently no judicially recognized separate ‘technological arts’ test to determine patent eligible subject matter under § 101.” *Ex Parte Lundgren*, Appeal No. 2003-2088 (BPAI 2005). As such, the Examiner’s focus on whether the claims apply, involve, use or advance the technological arts is not relevant. Therefore, and in view of the amendments to claim 121, the withdrawal of the rejection is respectfully requested.

Rejection Under 35 U.S.C. §102

Claims 72-78, 93-91, 99-114, 117, and 120-124, stand rejected under 35 U.S.C §102(e) as allegedly being anticipated by U.S. Patent 5,537,312 to Sekiguchi et al., hereinafter referred to as “Sekiguchi.” Applicant respectfully traverses the rejection.

All of the rejected claims have now been amended to include “printed” labels. However, Sekiguchi does not disclose or suggest printed labels as now claimed. Instead, Sekiguchi discloses electronic display information. As such, Sekiguchi fails to disclose each and every aspect of the claimed invention and thus, the rejection should be withdrawn.

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Dependent claims 73-76, 78, 98-97, 100-114, and 122-124 are dependent from and add features to one or more of claims 72, 77, 94, 99, 121. Thus, for at least the reasons set forth above, and the additional features, these claims are not anticipated by Sekiguchi.

Claims 92, 118, and 119, stand rejected under 35 U.S.C §102(b) as allegedly being anticipated by U.S. Patent 5,172,314 to Poland et al., hereinafter referred to as "Poland."

As amended, claim 92 and 118, now recite printing a label to a predetermined length that is coextensive with the entire horizontal dimension of the area of the space allocated on the self for arranging the product thereon. Poland, on the other hand, does not disclose the printed labels having a corresponding horizontal dimension. Rather, Poland discloses that tags 48 and 49, are physically located "nearby to selected retail products" (col. 4 lines 5-10). Since Poland does not disclose or suggest the methods claimed, it is respectfully requested that the rejection be withdrawn.

Dependent claim 119 is dependent from and adds features to claim 118. Thus, for at least the reasons set forth above, and the additional features, the claim is not anticipated by Poland.

Claim 126 stands rejected under 35 U.S.C §102(b) as being anticipated by U.S. Patent 5,383,111 to Homma.

As amended, claim 126 now recites providing a plurality of display shelves with a label, wherein the label includes a first machine readable code for identifying the label, the label being formed to a predetermined length that is coextensive with the entire horizontal dimension of the area of the space allocated on the self for arranging a respective product thereon. Homma, on the other hand, does not disclose such a method as claimed. Accordingly, it is respectfully requested that the rejection be withdrawn.

Rejection Under 35 U.S.C. §103

Claims 79-91, 115, 116, and 132, stand rejected under 35 USC 103 as being allegedly obvious based on Sekiguchi in view of Poland.

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Claims 79 and 132 now recite printing a label formed to a predetermined length that is coextensive with the entire horizontal dimension of the area of the space allocated on the self for arranging a respective product thereon, which is not disclose or suggested in either of the cited references. The Examiner's Office Action fails to make any specific citation to the disclosure of Poland, other than to state that "Poland is relied upon for teaching updating price labels that are either electronic or printed." However, even if this is assumed accurate and properly combinable with Sekiguchi, the resulting combination does not satisfy the claims. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 78-91 are dependent from and add features to claim 79. Thus for at least the reasons set forth above, and the additional features, these claims are not obvious over Sekiguchi in view of Poland.

Claim 115 and 116 depend from and add features to claim 99. Thus, for at least the reasons set forth above, and the additional features, these claims are not obvious.

Claims 127-131 stand rejected under 35 USC 103 as being obvious based on Sekiguchi in view of Berson.

Claim 127 now recites including information for determining the length of the label so that that label is constructed and arranged to a predetermined length that is coextensive with the entire horizontal dimension of the area of the space allocated on the self for arranging the product thereon, which is not disclose or suggested in either of the cited references. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 128-131 are dependent from and add features to claim 127. Thus for at least the reasons set forth above, and the additional features, these claims are not obvious over Sekiguchi in view of Berson.

Claim 98, which depends from claim 94, stands rejected under 35 U.S.C. §103 as being allegedly obvious based on Sekiguchi in view of Marvin. However, Marvin does not cure the deficiencies of Sekiguchi, as stated above with respect to claim 94. Thus, the rejection should be withdrawn as claim 98 is allowable for at least the reasons set forth above with respect to claim 94.

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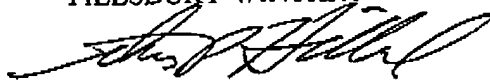
Conclusion

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

Please charge any fees associated with the submission of this paper to Deposit Account Number 00909 (*Ref. No.: 037033-031407*). The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Respectfully submitted,

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